ORIGINAL

Supreme Court, U.S.
FILED
DEC 12 2000
CLERK

No. 00-751

IN THE
SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

OUDONE MOUNSAVENG,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent Oudone Mounsaveng, pursuant to Supreme Court Rule 39 and 18 U.S.C. § 3006A(d)(7), asks leave to file his Response by Respondent to Petition for Writ of *Certiorari* to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis*.

On April 19, 1999, the Federal Public Defender for the District of Nevada was appointed by the United States District Court for the District of Nevada to represent

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Oudone Mounsaveng in the underlying civil case and on appeal to the Ninth Circuit Court of Appeals. This appointment was made pursuant to 18 U.S.C. § 3006A(a)(2)(B). Leave to proceed *in forma pauperis* has not been sought in any other court.

At the time of the appointment, Mr. Mounsaveng had no assets and money. Mr. Mounsaveng was detained by the Immigration and Naturalization Service throughout the proceedings in the district court. Since his release on or about August 10, 2000, Mr. Mounsaveng has resided with his sister in Portland, Oregon. He continues to be indigent and unable to finance the costs of this opposition to petition for writ of *certiorari.*

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WHEREFORE, the respondent, by and through the undersigned, respectfully prays for leave to proceed in the Supreme Court of the United States *in forma pauperis*.

DATED this 12th day of December, 2000.

Respectfully submitted,

R. L. Valladares FOR

Franny A. Forsman
Federal Public Defender

R. L. Valladares

Rene L. Valladares
Assistant Federal Public Defender
Counsel of Record

R. L. Valladares FOR

Arthur L. Allen
Assistant Federal Public Defender

Federal Public Defender's Office
District of Nevada
330 South Third Street, Suite 700
Las Vegas, Nevada 89101
(702) 388-6577

Attorneys for Respondent Oudone Mounsaveng

CERTIFICATE OF SERVICE

No. 00-751

IN THE SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioners,

v.

OUDONE MOUNSAVENG,

Respondent.

I, Arthur L. Allen, a member of the Bar of this Court, hereby certify that on this 12th day of December, 2000, three copies of the Response by Respondent to Petition for Writ of *Certiorari* and three copies of Mr. Mounsaveng's Motion for Leave to Proceed *In Forma Pauperis* in the above-entitled case were mailed, first-class postage prepaid, to Seth P. Waxman, Solicitor General of the United States of America, Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, counsel for Petitioner herein. I further certify that all parties required to be served have been served.

Arthur L. Allen

Arthur L. Allen
Assistant Federal Public Defender
330 South Third Street, Suite 700
Las Vegas, Nevada 89101
(702) 388-6577
Counsel for Respondent Oudone Mounsaveng

ORIGINAL

Supreme Court, U.S.
FILED
DEC 12 P 3:30
CLERK

No. 00-751

In The Supreme Court of the United States

October Term, 2000

IMMIGRATION AND NATURALIZATION SERVICE, Petitioner,

v.

OUDONE MOUNSAVENG, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

FRANNY A. FORSMAN
Federal Public Defender
for the District of Nevada

RENE L. VALLADARES
Assistant Federal Public Defender
Counsel of Record

ARTHUR L. ALLEN
Assistant Federal Public Defender

330 South Third Street, Suite 700
Las Vegas, Nevada 89101
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Counsel for Respondent

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SUPREME COURT, U.S.

QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. § 1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under 8 U.S.C. § 1231(a)(6), that provision violates Oudone Mounsaveng's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, he is not a danger to the community or a flight risk.

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IN THE SUPREME COURT OF THE UNITED STATES

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RESPONSE BY RESPONDENT TO PETITION FOR A
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OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A, B & C to Pet. for Cert. 1a-14a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. §241.4, and § 1231(a)(3). The additional statutory provision governing Mr. Mounsaveng's release is 8 U.S.C. § 1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

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The constitutional provision involved is the Fifth Amendment Due Process Clause which provides, in relevant part: "No person shall . . . be deprived of life, liberty or property, without due process of law[.]"

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-14a.

By writ of habeas corpus, Mr. Mounsaveng challenged on statutory and federal constitutional grounds his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonably foreseeable future, if ever. The District Court denied Mr. Mounsaveng's petition. However, the Court of Appeals remanded Mr. Mounsaveng's writ of habeas corpus to the District Court for reconsideration based upon the circuit's decision in *Ma v. Reno,* 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). In light of the grant of *certiorari* in *Ma*, Mr. Mounsaveng waives his right to file a Brief in Opposition. Mr. Mounsaveng does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Mounsaveng's substantive due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno,* 208 F.3d 815, and *Zadvydas*

v. Underdown, 185 F.3d 279 (5th Cir. 1999), *cert. granted*, 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* review on October 10, 2000.

Accordingly, Mr. Mounsaveng does not waive any objections to the government's recitation of the proper legal analysis in Mr. Mounsaveng's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

CONCLUSION

The petitioners' petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma,* No. 00-38, and *Zadvydas v. Underdown,* No. 99-7791, and then disposed of as appropriate in light of the decisions in those cases.

Respectfully submitted,

R. L. Vnlls FOR

Franny A. Forsman
Federal Public Defender for the District of Nevada

R. L. Vnlls

Rene L. Valladares
Assistant Federal Public Defender
Counsel of Record

R. L. Vnlls FOR

Arthur L. Allen
Assistant Federal Public Defender

Counsel for Respondent, Oudone Mounsaveng

December 12, 2000

IN THE SUPREME COURT OF THE UNITED STATES

No. 00-751

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v.
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ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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v. Underdown, 185 F.3d 279 (5th Cir. 1999), *cert. granted*, 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* review on October 10, 2000.

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Respectfully submitted,

R. L. Vmms FOR

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Rene L. Valladares
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Counsel of Record

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December 12, 2000